

EXHIBIT A

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CVPS2204080**MUTO vs FENIX INTERNATIONAL LIMITED**Filed Date: **10/10/2022 Unlimited Civil Business Tort/Unfair Business Practice**Case Status: **Active****Palm Springs - Department PS2**[Print Case Report](#)

Case Summary

COMPLAINTS/PETITIONS

Filings	Represented By	Status	Dispositions
MUTO vs FENIX INTERNATIONAL LIMITED Unlimited Civil Business Tort/Unfair Business Practice		Active	
1st Amended Complaint for Business Tort/Unfair Business Practice (Over \$25,000) of MARCELO MUTO		Filed: 10/24/2022	
Plaintiff: MARCELO MUTO	MARK POE		
LIMITED	Defendant: FENIX INTERNATIONAL	Waiting Service as of 10/24/2022	
	Defendant: FENIX INTERNET LLC	Waiting Service as of 10/24/2022	

HEARINGS

Date Time	Type	Judicial Officer	Location/Courtroom	Disposition
04/19/2023 08:30 AM	Case Management Conference	Manuel Bustamante	Department PS2	

DEADLINES & REMINDERS

Date Created	Timestandard	Expiration Date	Status
10/10/2022	Non-Proof of Service of Summons and Complaint	12/09/2022	Active

DOCUMENTS

Search

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Status	Date	Description	Filed By	Confidential
Filed	10/10/2022	Complaint for Business Tort/Unfair Business Practice (Over \$25,000)	MARCELO MUTO	
Filed	10/10/2022	Civil Case Cover Sheet	MARCELO MUTO	
Filed	10/10/2022	Certificate of Counsel.	MARCELO MUTO	
Filed	10/10/2022	Summons Issued and Filed	MARCELO MUTO	
Filed	10/10/2022	Summons Issued and Filed	MARCELO MUTO	
Generated	10/21/2022	Notice of Case Management Conference Complaint for Business Tort/Unfair Business Practice (Over \$25,000)		
Generated	10/21/2022	Notice of Department Assignment		
Filed	10/24/2022	1st Amended Complaint for Business Tort/Unfair Business Practice (Over \$25,000) of MARCELO MUTO	MARCELO MUTO	

CASE LEDGER

Date Imposed	Fee/Fine Description	Amount	Paid	Balance
10/21/2022	Unlimited complaint or other first paper in unlimited civil case amount over \$25,000 including UD over \$25K, petition for writ of review, mandate, or prohibition; petition for a decree of change of name or gender (GC70611)	\$450.00	\$450.00	\$0.00
10/21/2022	Fee for eFiling	\$1.00	\$1.00	\$0.00
10/25/2022	Fee for eFiling	\$1.00	\$1.00	\$0.00

[Go Back](#)

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Attorneys for Plaintiff
MARCELO MUTO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

UNLIMITED JURISDICTION

MARCELO MUTO, and all others similarly
situated,

Plaintiff,

v.

FENIX INTERNATIONAL LIMITED; FENIX
INTERNET LLC,

Defendants.

Case No. **CVPS2204080**

COMPLAINT FOR:

(1) VIOLATION OF THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT [Civ. Code § 1750 et
seq.] and

(2) UNFAIR COMPETITION [Bus. &
Prof. Code § 17200 et seq., § 17600 et
seq.]

INTRODUCTION

1. Plaintiff Marcelo Muto brings this action to remedy Defendants' failure to comply with the ARL.

PARTIES

2. Plaintiff Marcelo Muto is a resident of Riverside County, California.

3. Defendant Fenix International Limited ("FIL") is, on information and belief, a business entity incorporated under the laws of the United Kingdom, with its principal place of

1 business in London. FIL is the counterparty to the Terms of Service that Mr. Muto entered in
2 Riverside County. On information and belief, FIL is the business entity that receives some or all
3 of the automatic renewal fees that are paid by OnlyFans customers and that are the subject of this
4 complaint.

5 4. Defendant Fenix Internet LLC is a Delaware limited liability company that is
6 headquartered in Florida. On information and belief, Fenix Internet LLC is a wholly owned
7 subsidiary of FIL, and is the company through which OnlyFan's content creators receive
8 payment. Accordingly, Fenix Internet LLC is, or has been, continuously in possession of a
9 portion of the money Mr. Muto seeks to have restored to him by virtue of this lawsuit.

10 **VENUE**

11 5. Venue is proper in this jurisdiction because Plaintiff resides in Riverside County
12 and entered into the transactions at issue in this case in Riverside County.

13 **FACTUAL ALLEGATIONS**

14 6. Defendants violated California's ARL on their OnlyFans platform by not
15 presenting the automatic renewal terms in a clear and conspicuous manner, and by not sending
16 Mr. Muto a post-transaction acknowledgement containing the information required by section
17 17602(a)(3).

18 7. Plaintiff Marcelo Muto subscribed to follow the account of an OnlyFans creator
19 called "@taste.of.heaven" in February 2021. Mr. Muto paid the initial subscription fee to that
20 account, and in doing so failed to receive an adequate set of disclosures at the time of that
21 transaction to clearly and conspicuously advise him that his card would be automatically billed
22 upon expiration of his initial enrollment period. Similarly, upon information and belief Mr. Muto
23 did not receive any post-transaction acknowledgement advising him of the matters set forth in
24 section 17602(a)(3), but if he did, that acknowledgement would have consisted of nothing but a
25 very short email identifying the account he had subscribed to.

26 8. Mr. Muto was thereafter charged a \$29.99 automatic renewal fee on or about
27 March 14, 2021, which Defendants refused to refund to him.

28 9. Had Mr. Muto received the clear and conspicuous disclosures required by the ARL

1 at the time he initially subscribed to @taste.of.heaven, and the post-subscription acknowledgment
2 required by section 17602(a)(3) with details on the auto-renewal offer and a readily accessible
3 means of canceling, he would have canceled his subscription prior to the renewal date, and would
4 not have lost \$29.99 to Defendants.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of the California Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.*)**

7 10. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
8 fully set forth herein.

9 11. Plaintiff is a “consumer” within the meaning of Civil Code § 1761(d) in that
10 Plaintiff sought or acquired Defendants’ goods and/or services for personal purposes.

11 12. Defendants’ membership program pertains to “services” within the meaning of
12 Civil Code § 1761(a) and (b).

13 13. The payments that Plaintiff made to Defendants are “transactions” within the
14 meaning of Civil Code section 1761(e).

15 14. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (9), and (14), by
16 representing that Defendants’ goods or services have characteristics that they do not have;
17 advertising goods and services with the intent not to sell them as advertised; and representing that
18 a transaction confers or involves rights, remedies, or obligations that it does not have or involve,
19 or that are prohibited by law.

20 15. Unless enjoined and restrained by this Court, Defendants will continue to commit
21 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), Plaintiff seeks an injunction
22 prohibiting Defendants from continuing their unlawful practices as alleged herein.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of the California Unfair Competition Law, B&P Code § 17200 *et seq.*; § 17600 *et***
25 ***seq.*)**

26 16. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
27 fully set forth herein.

28 17. The Unfair Competition Law defines unfair competition as including any

1 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or
2 misleading advertising; and any act of false advertising under § 17500.

3 18. In the course of conducting business in California within the applicable limitations
4 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
5 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation: (a)
6 failing to present automatic renewal offer terms in a clear and conspicuous manner before a
7 subscription or purchasing agreement is fulfilled and in visual proximity to the offer; (b) charging
8 the consumer's credit card or debit card for an automatic renewal fee without first obtaining the
9 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of
10 the automatic renewal offer terms; and (c) failing to provide an acknowledgment that includes
11 clear and conspicuous disclosure of all automatic renewal offer terms, the cancellation policy, and
12 information regarding how to cancel in a manner that is capable of being retained by the
13 consumer and that provides a mechanism for cancellation that is cost-effective, timely, and easy
14 to use, all in violation of § 17602(a) and (b).

15 19. Plaintiff has lost money as a result of Defendants' unlawful acts of unfair
16 competition, in that Plaintiff would not have incurred the automatic renewal fee associated with
17 the account of the creator known as @taste.of.heaven had Defendants fully, clearly, and
18 conspicuously apprised him of the terms of the automatic renewal offer described herein.

19 20. Pursuant to § 17203, Plaintiff is entitled to restitution of the amount he paid to
20 Defendants in connection with an automatic renewal membership program.

21 21. Unless enjoined and restrained by this Court, Defendants will continue to commit
22 the violations alleged herein. Pursuant to § 17203, Plaintiff seeks an injunction prohibiting
23 Defendants from continuing their unlawful practices as alleged herein.

24 **PRAYER**

25 Plaintiff prays for judgment against Defendants, as follows:

- 26 1. For restitution of the amounts he was unlawfully charged;
27 2. For injunctive relief against further violations of the ARL by Defendants;
28 3. For costs of suit;

1 4. For prejudgment interest; and

2 5. For such other relief as the Court deems just and proper.

3
4 Dated: September 21, 2022

GAW | POE LLP

5
6 By: 

MARK POE

Attorneys for Plaintiff
Marcelo Muto

<div>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark Poe (223714) Gaw Poe LLP 4 Embarcadero, Suite 1400 San Francisco, CA 94111 TELEPHONE NO.: 415-766-7451 ATTORNEY FOR (Name): Marcelo Muto</div> <div>FAX NO.: 415-737-0642</div>		<div>FOR COURT USE ONLY</div>
<div>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 3255 E. Tahquitz Canyon Way MAILING ADDRESS: 3255 E. Tahquitz Canyon Way CITY AND ZIP CODE: Palm Springs 92262 BRANCH NAME: Palm Springs Courthouse</div>		
<div>CASE NAME: Muto v. Fenix International Limited, et al.</div>		
<div><div>CIVIL CASE COVER SHEET</div><div><div><input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)</div><div><input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)</div></div></div>	<div><div>Complex Case Designation</div><div><div><input type="checkbox"/> Counter</div><div><input type="checkbox"/> Joinder</div></div><div>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</div></div>	
		<div><div>CASE NUMBER: CVP82204080</div><div><div>JUDGE:</div><div>DEPT:</div></div></div>

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14)	
Non-PI/PD/WD (Other) Tort	<input type="checkbox"/> Wrongful eviction (33)	
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Other real property (26)	Enforcement of Judgment
<input type="checkbox"/> Civil rights (08)	Unlawful Detainer	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Commercial (31)	Miscellaneous Civil Complaint
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Residential (32)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> Other complaint (<i>not specified above</i>) (42)
<input type="checkbox"/> Professional negligence (25)	Judicial Review	Miscellaneous Civil Petition
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Asset forfeiture (05)	<input type="checkbox"/> Partnership and corporate governance (21)
Employment	<input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Writ of mandate (02)	
<input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Other judicial review (39)	

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (*specify*): 2
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: September 21, 2022
Mark Poe

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- | | |
|--|---|
| <input type="checkbox"/> BANNING 311 E. Ramsey St., Banning, CA 92220 | <input type="checkbox"/> MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563 |
| <input type="checkbox"/> BLYTHE 265 N. Broadway, Blythe, CA 92225 | <input checked="" type="checkbox"/> PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262 |
| <input type="checkbox"/> CORONA 505 S. Buena Vista, Rm. 201, Corona, CA 92882 | <input type="checkbox"/> RIVERSIDE 4050 Main St., Riverside, CA 92501 |
| <input type="checkbox"/> MORENO VALLEY 13800 Heacock St., Ste. D201,
Moreno Valley, CA 92553 | |

RI-CI032

<small>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address)</small> Mark Poe (223714) Gaw Poe LLP 4 Embarcadero, Suite 1400 San Francisco, CA 94111 <small>TELEPHONE NO:</small> 415-766-7451 <small>FAX NO. (Optional):</small> <small>E-MAIL ADDRESS (Optional):</small> mpoe@gawpoe.com <small>ATTORNEY FOR (Name):</small> Marcelo Muto		<small>FOR COURT USE ONLY</small>
<small>PLAINTIFF/PETITIONER:</small> Marcelo Muto		
<small>DEFENDANT/RESPONDENT:</small> Fenix International Limited; Fenix Internet LLC		
<small>CASE NUMBER:</small> CVPS2204080		
CERTIFICATE OF COUNSEL		

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

- ☒ The action arose in the zip code of: 92201
- ☐ The action concerns real property located in the zip code of: _____
- ☐ The Defendant resides in the zip code of: _____

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 3115 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date October 6, 2022

Mark Poe

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)



(SIGNATURE)

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
FENIX INTERNET LLC

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
Marcelo Muto

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside County Superior Court

Palm Springs Courthouse, 3255 E. Tahquitz Canyon Way, Palm Springs, CA

CASE NUMBER:
(Número del Caso):

CVP82204080

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Poe, Gaw | Poe LLP, 4 Embarcadero, Suite 1400, San Francisco, CA 415-766-7451

DATE:
(Fecha) 10/10/2022

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



GC68150(g)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
FENIX INTERNATIONAL LIMITED

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Marcelo Muto

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside County Superior Court
Palm Springs Courthouse, 3255 E. Tahquitz Canyon Way, Palm Springs, CA

CASE NUMBER:
(Número del Caso):

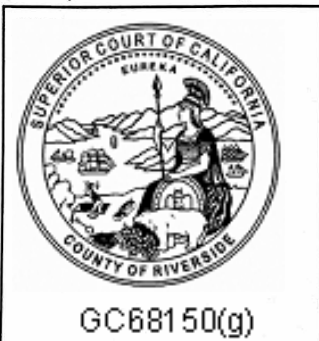
CVP52204080

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Mark Poe, Gaw | Poe LLP, 4 Embarcadero, Suite 1400, San Francisco, CA 415-766-7451

DATE:
(Fecha) 10/10/2022

Clerk, by
(Secretario)  , Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse
3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Case Number: CVPS2204080

Case Name: MUTO vs FENIX INTERNATIONAL LIMITED

MARK POE
4 EMBARCADERO CENTER SUITE 1400
San Francisco, CA 94111

NOTICE OF CASE MANAGEMENT CONFERENCE

The Case Management Conference is scheduled as follows:

Hearing Date	Hearing Time	Department
04/19/2023	8:30 AM	Department PS2
Location of Hearing: 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262		

No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement and serve it on all other parties in the case. CRC, Rule 3.725.



The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6 shall be filed in accordance with that section.

Remote Appearance at Hearing: The court **strongly encourages** parties and counsel to appear remotely for non-evidentiary hearings in civil cases. Pursuant to local rule 3132, persons intending to appear remotely shall notify all opposing parties of their intention to appear remotely before the hearing. Notice may be given informally, including by telephone, email, or text message. To appear remotely, on the day of the hearing, either use your computer, mobile device, or dial (833) 568-8864 (toll free) or (669) 254-5252, when prompted enter:

Meeting ID: 160-922-1726 #
Access Code: Press the # key (no number after the #)

Please MUTE your phone until your case is called, and it is your turn to speak. It is important to note that you must call twenty (20) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

	<p>Interpreter services are available upon request. If you need an interpreter, please complete and submit the online Interpreter Request Form (https://riverside.courts.ca.gov/Divisions/InterpreterInfo/ri-in007.pdf) or contact the clerk's office and verbally request an interpreter. All requests must be made in advance with as much notice as possible, and prior to the hearing date in order to secure an interpreter.</p>
	<p>Assistive listening systems, computer-assisted real time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the Office of the ADA Coordinator by calling (951) 777-3023 or TDD (951) 777-3769 between 8:00 am and 4:30 pm or by emailing ADA@riverside.courts.ca.gov to request an accommodation. A <i>Request for Accommodations by Persons With Disabilities and Order</i> (form MC-410) must be submitted when requesting an accommodation. (Civil Code section 54.8.)</p>

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the Notice of Case Management Conference on this date, by depositing said copy as stated above.

Dated: 10/21/2022

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by:



K. Jove, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse
3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Case Number: CVPS2204080

Case Name: MUTO vs FENIX INTERNATIONAL LIMITED

MARCELO MUTO

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Dated: 10/21/2022

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by:



K. Jove, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse
3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Case Number: CVPS2204080

Case Name: MUTO vs FENIX INTERNATIONAL LIMITED

FENIX INTERNATIONAL LIMITED

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Dated: 10/21/2022

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by:



K. Jove, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse
3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Case Number: CVPS2204080

Case Name: MUTO vs FENIX INTERNATIONAL LIMITED

FENIX INTERNET LLC

NOTICE OF CASE MANAGEMENT CONFERENCE

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Dated: 10/21/2022

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by:



K. Jove, Deputy Clerk

Notice has been printed for the following Firm/Attorneys or Parties: CVPS2204080

POE, MARK
4 EMBARCADERO CENTER SUITE 1400

San Francisco, CA 94111

MUTO, MARCELO

FENIX INTERNET LLC

FENIX INTERNATIONAL LIMITED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse
3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Case Number: CVPS2204080

Case Name: MUTO vs FENIX INTERNATIONAL LIMITED

NOTICE OF DEPARTMENT ASSIGNMENT



The above entitled case is assigned to the Honorable Manuel Bustamante in Department PS2 for All Purposes.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

The court follows California Rules of Court, Rule 3.1308(a)(1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law and motion matter are posted on the internet by 3:00 p.m. on the court day immediately before the hearing at <http://riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, you must (1) notify the judicial secretary at (760) 904-5722 and (2) inform all other parties, no later than 4:30 p.m. the court day before the hearing. If no request for oral argument is made by 4:30 p.m., the tentative ruling will become the final ruling on the matter effective the date of the hearing.

The filing party shall serve a copy of this notice on all parties.

	Interpreter services are available upon request. If you need an interpreter, please complete and submit the online Interpreter Request Form (https://riverside.courts.ca.gov/Divisions/InterpreterInfo/ri-in007.pdf) or contact the clerk's office and verbally request an interpreter. All requests must be made in advance with as much notice as possible, and prior to the hearing date in order to secure an interpreter.
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Dated: 10/21/2022

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by:



K. Jove, Deputy Clerk

MARK W. POE (BAR NO. 223714)
mpoe@gawpoe.com
VICTOR MENG (BAR NO. 254102)
vmeng@gawpoe.com
FLORA VIGO (BAR NO. 239643)
fvigo@gawpoe.com
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4 Embarcadero, Suite 1400
San Francisco, CA 94111
Telephone: 415-766-7451

Attorneys for Plaintiff
MARCELO MUTO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

UNLIMITED JURISDICTION

MARCELO MUTO, and all others similarly
situated,

Plaintiff,

v.

FENIX INTERNATIONAL LIMITED; FENIX
INTERNET LLC,

Defendants.

Case No. CVPS2204080

CLASS ACTION

FIRST AMENDED COMPLAINT
FOR:

(1) FALSE ADVERTISING –
VIOLATION OF THE CALIFORNIA
AUTOMATIC RENEWAL LAW [Bus.
and Prof. Code § 17600 et seq. and §
17535];

(2) VIOLATION OF THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT [Civ. Code § 1750 et
seq.] and

(3) UNFAIR COMPETITION [Bus. &
Prof. Code § 17200 et seq.]

INTRODUCTION

1. Pursuant to California Code of Civil Procedure section 472(1), Plaintiff Marcelo Muto hereby amends the complaint he initially filed in this action on October 10, 2022.

7 3. Defendants own and operate the popular sexual content platform “OnlyFans,”
8 through which consumers can “subscribe” to the OnlyFans accounts of one or more among
9 thousands of different performers, known as “content creators.” Consumer subscriptions are the
0 cornerstone of Defendants’ revenue model. Yet in violation of California’s ARL, by failing to
1 clearly and conspicuously advise its customers that their initial subscription to a creator will be
2 automatically renewed, OnlyFans tricks its customers into making recurring payments, triggering
3 a charge to the customer’s debit or credit card ranging from \$4.99 to \$49.99 for the following
4 month.

PARTIES

6. Defendant Fenix International Limited (“FIL”) is, on information and belief, a business entity incorporated under the laws of the United Kingdom, with its principal place of business in London. FIL is the counterparty to the Terms of Service that customers of OnlyFans.com enter when they become members of the site, and thus does business throughout the United States, including with hundreds or thousands of residents of Riverside County. On information and belief, FIL is the business entity that receives some or all of the automatic renewal fees that are paid by OnlyFans customers and that are the subject of this complaint.

1 headquartered in Florida. On information and belief, Fenix Internet LLC is a wholly owned
 2 subsidiary of FIL, and is the company through which OnlyFan's content creators receive
 3 payment. Accordingly, Fenix Internet LLC is, or has been, continuously in possession of money
 4 wrongfully taken from Plaintiff and the class he seeks to represent, and which is to be restored to
 5 those consumers by virtue of this lawsuit.

6 **VENUE**

7 8. Venue is proper in this jurisdiction because Plaintiff resides in Riverside County
 8 and entered into the transactions at issue in this case in Riverside County.

9 **APPLICABLE LAW**

10 9. In 2009, the California Legislature passed Senate Bill 340, which took effect on
 11 December 1, 2010 as Business & Professions Code section 17600 *et seq.*, commonly known as the
 12 Automatic Renewal Law or "ARL." The ARL was passed because:

13 It has become increasingly common for consumers to complain about
 14 unwanted charges on their credit cards for products or services that the
 15 consumer did not explicitly request or know they were agreeing to.
 16 Consumers report they believed they were making a one-time purchase of a
 17 product, only to receive continued shipments of the product and charges on
 18 their credit card. These unforeseen charges are often the result of
 19 agreements enumerated in the "fine print" on an order or advertisement that
 20 the consumer responded to.

21 10. The Assembly Committee on the Judiciary provided the following background for
 22 the legislation:

23 This non-controversial bill, which received a unanimous vote on the Senate
 24 floor, seeks to protect consumers from unwittingly consenting to "automatic
 25 renewals" of subscription orders or other "continuous service" offers.
 26 According to the author and supporters, consumers are often charged for
 27 renewal purchases without their consent or knowledge. For example,
 28 consumers sometimes find that a magazine subscription renewal appears on
 a credit card statement even though they never agreed to a renewal.

11. The ARL seeks to ensure that, before there can be a legally-binding automatic
 renewal or continuous service arrangement, there must first be clear and conspicuous disclosure
 of certain terms and conditions and affirmative consent by the consumer. To that end, § 17602(a)
 makes it unlawful for any business making an automatic renewal offer or a continuous service
 offer to a consumer in California to do any of the following:

1 a. Fail to present the automatic renewal offer terms in a clear and conspicuous
2 manner before the subscription or purchasing agreement is fulfilled and in visual proximity to the
3 request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type
4 than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same
5 size, or set off from the surrounding text of the same size by symbols or other marks, in a manner
6 that clearly calls attention to the language.” The statute defines “automatic renewal offer terms”
7 to mean the “clear and conspicuous” disclosure of the following: (1) that the subscription or
8 purchasing agreement will continue until the consumer cancels; (2) the description of the
9 cancellation policy that applies to the offer; (3) the recurring charges that will be charged to the
10 consumer’s credit or debit card as part of the automatic renewal plan or arrangement, (4) the
11 length of the automatic renewal term or that the service is continuous; and (5) the minimum
12 purchase obligation, if any.

13 b. Charge the consumer’s credit or debit card for an automatic renewal or
14 continuous service without first obtaining the consumer’s affirmative consent to the agreement
15 containing the automatic renewal offer terms, including the terms of an automatic renewal offer
16 or continuous service offer that is made at a promotional or discounted price for a limited period
17 of time.

18 c. Fail to provide an acknowledgment that includes the automatic renewal terms,
19 cancellation policy, and information regarding how to cancel in a manner that is capable of being
20 retained by the consumer. Section 17602(b) requires that the acknowledgment specified in
21 § 17602(a)(3) include a toll-free telephone number, electronic mail address, or another “cost-
22 effective, timely, and easy-to-use” mechanism for cancellation.

23 12. If a business sends any goods, wares, merchandise, or products to a consumer
24 under a purported automatic renewal or continuous service arrangement without first obtaining
25 the consumer’s affirmative consent to an agreement containing the “clear and conspicuous”
26 disclosures as specified in the ARL, the goods, wares, merchandise, and/or products are deemed
27 to be an unconditional gift to the consumer, who may use or dispose of them without any
28 obligation whatsoever. While the ARL does not include a private right of action, a violation

1 nevertheless gives rise to restitution and injunctive relief under the False Advertising Law and
2 Unfair Competition Law.

3 **FACTUAL ALLEGATIONS**

4 13. Every subscription to a creator's content on OnlyFans violates the ARL in
5 numerous ways, but primarily by:

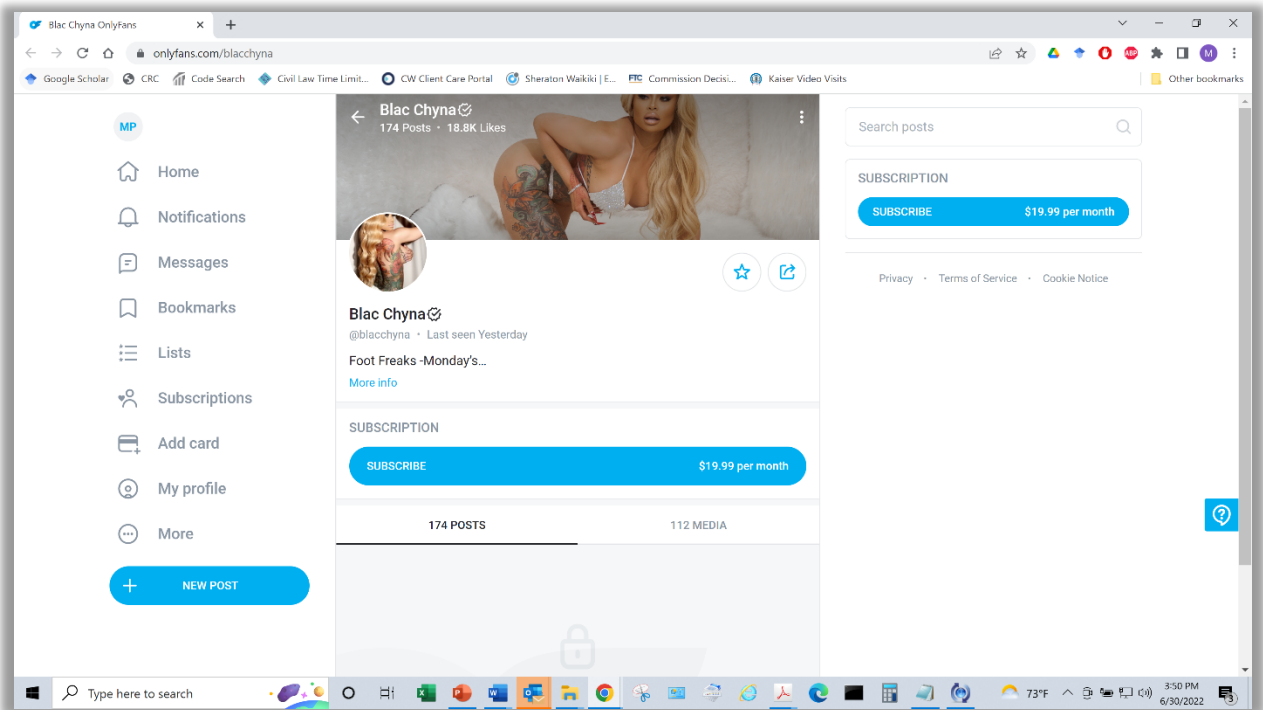
- 6 (1) failing to "present the automatic renewal offer terms . . . in a clear and
7 conspicuous manner" before payment is made, in violation of section 17602(a)(1);
8 (2) charging the consumer's credit or debit card "without first obtaining the
9 consumer's affirmative consent to the agreement containing the automatic renewal
10 offer terms" in violation of section 17602(a)(2); and
11 (3) failing to "provide an acknowledgment that includes the automatic renewal
12 offer terms . . . cancellation policy, and information regarding how to cancel" in
13 violation of section 17602(a)(3).

14 14. The foregoing violations are all made obvious through an illustration of an
15 exemplary enrollment to the OnlyFans account of the popular Kardashian-adjacent celebrity and
16 OnlyFans content creator known as "Blac Chyna," who is reported to have been the top-earning
17 creator on OnlyFans for 2021, generating revenue for Defendants of \$20 million per month.

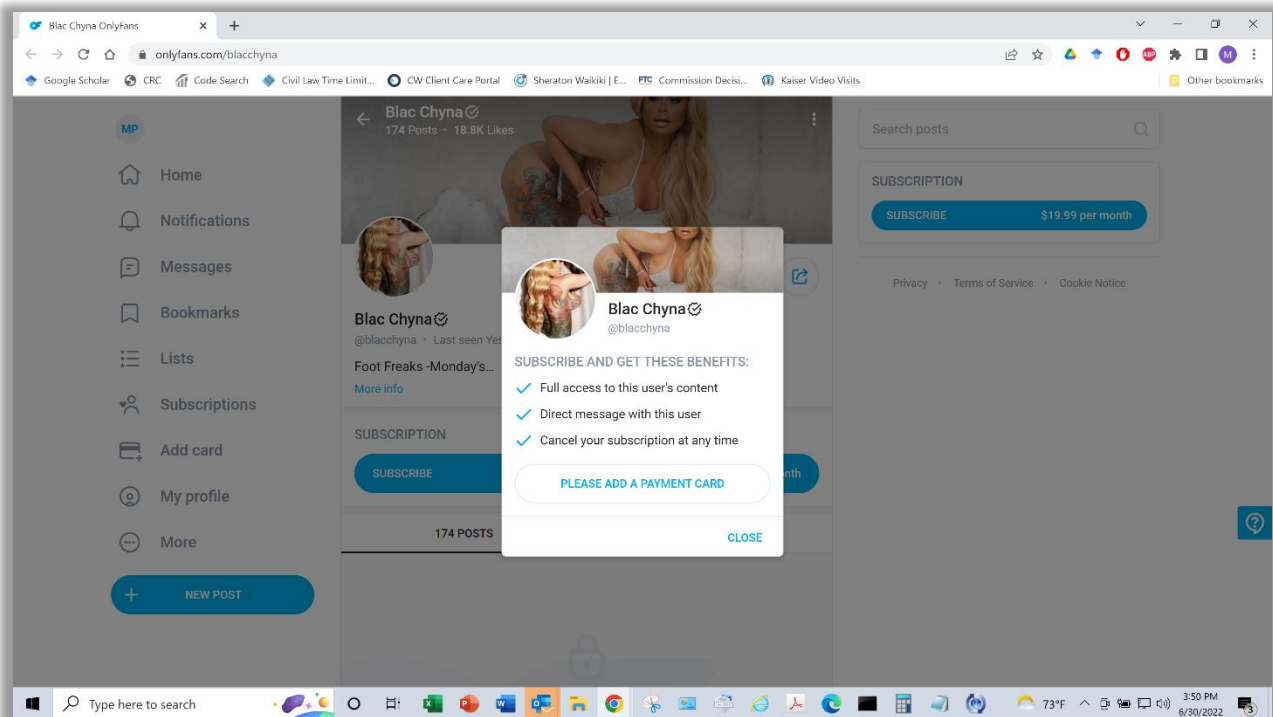
18 15. A user joins OnlyFans by navigating to OnlyFans.com and clicking a hyperlink
19 titled "Sign up for OnlyFans." The user then creates an account by choosing a user name, and
20 inputting their email address and choosing a password. After receiving an email at that address to
21 "verify your email address," the user is taken to a "Home" screen with a menu on the left, a
22 middle section with a selection of "posts" made by users and creators, a search tool for finding
23 creators, and a list of "suggestions" on the right, highlighting certain content creators whose
24 profiles the user can scroll through.

25 16. When a user searches and then navigates to the profile page for Blac Chyna, for
26
27
28

example, they are presented with the following screen:

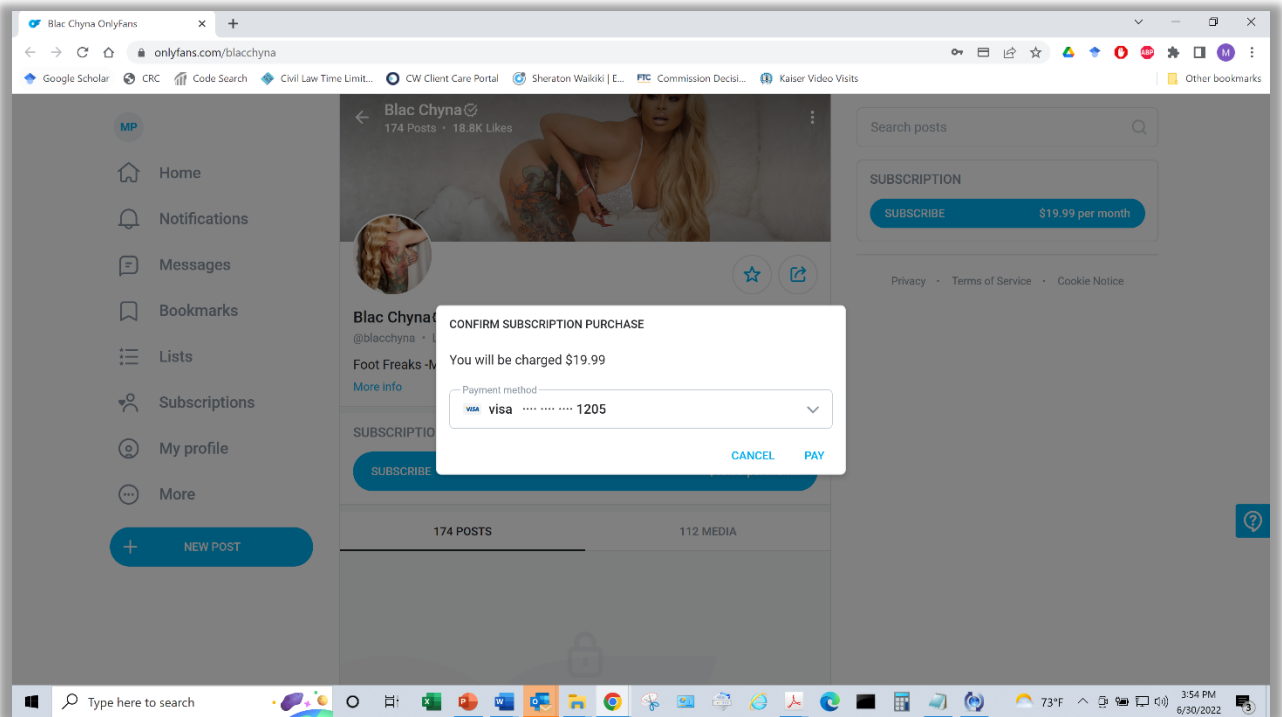


17. Upon clicking the “SUBSCRIBE” button, the user is advised of certain “benefits” from the subscription and is asked to add a payment card:

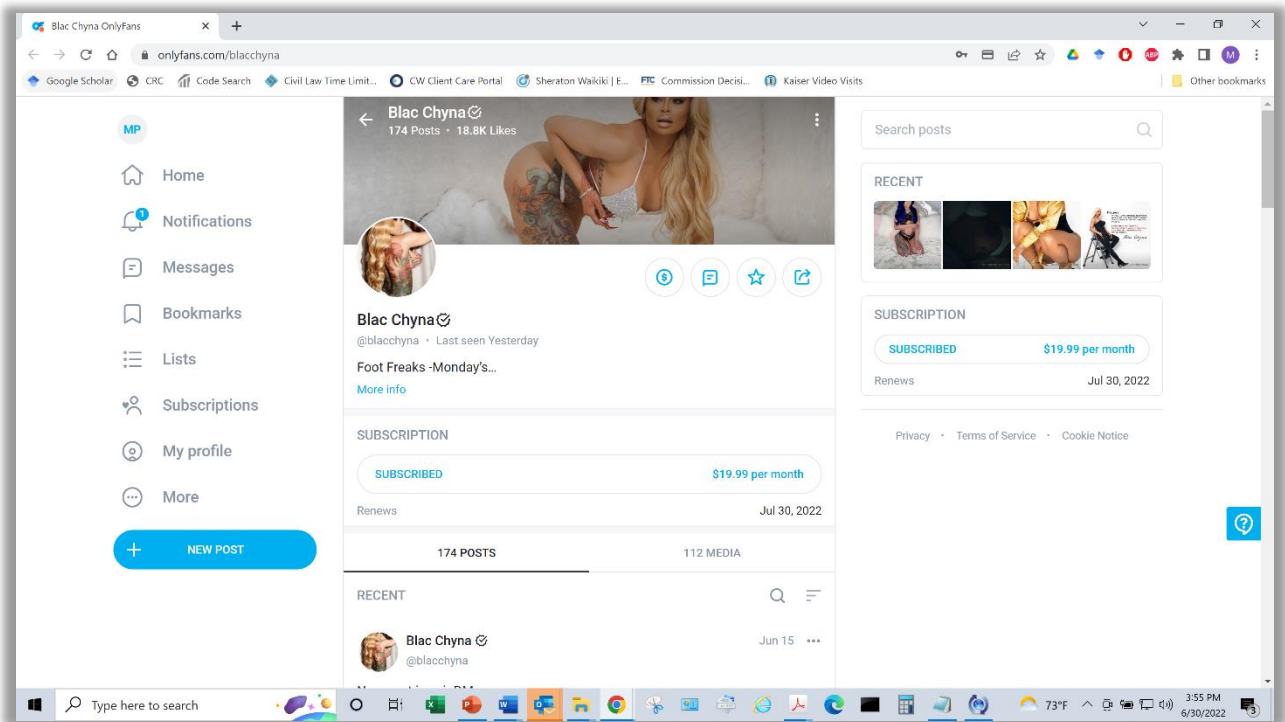


18. The user then inputs their credit card information, and receives an on-screen

confirmation that “You will be charged \$19.99,” with no suggestion that the charge will be recurring:

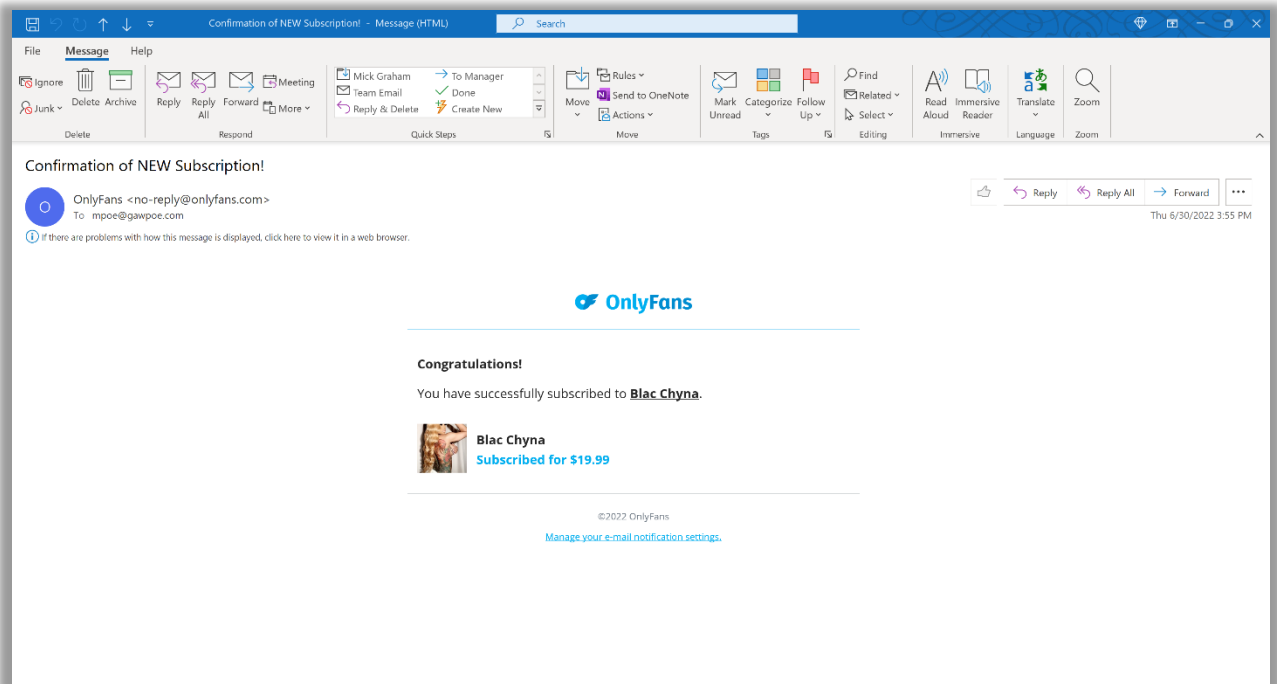


19. After clicking the “PAY” link on that screen the user is returned to the creator’s profile page, where a box in the middle of the page notes that the user is “SUBSCRIBED” in bold blue font, and with only a one-word indication (in smaller, lower-case, light gray font) that the subscription “Renews,” and with the renewal date indicated in similarly small, light-gray font:



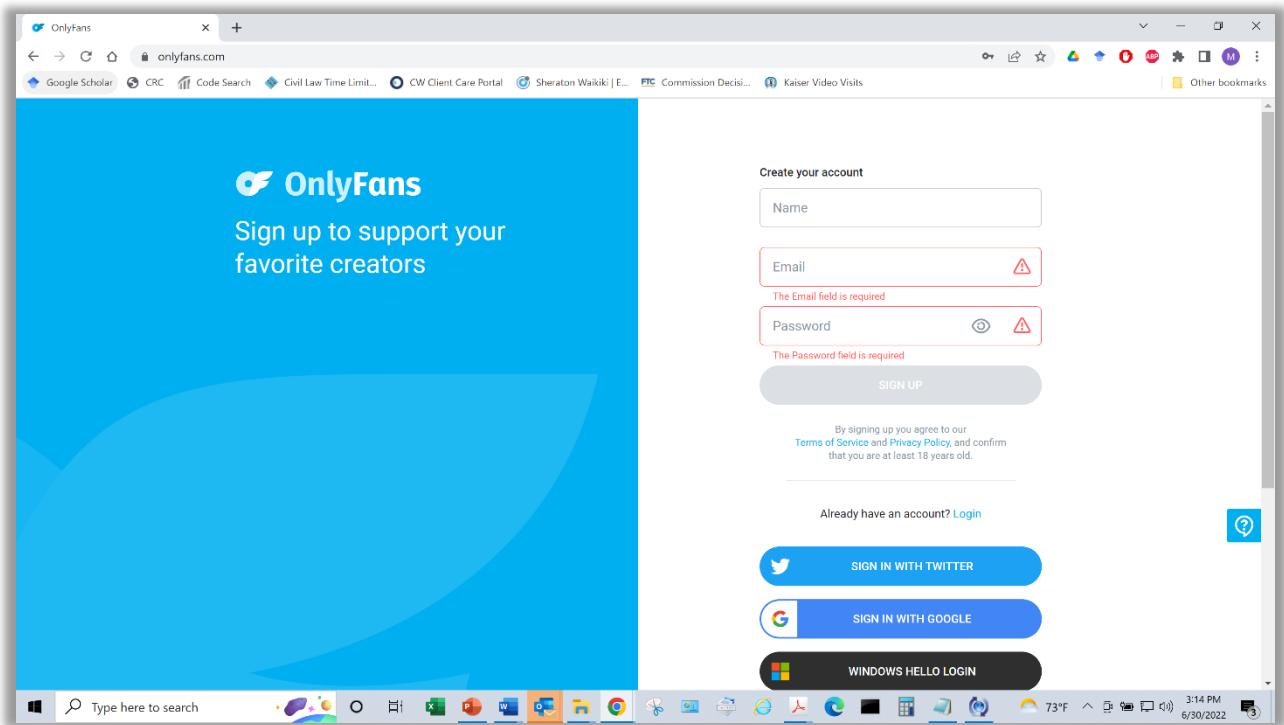
20. As shown, the creator's profile page does not include any indication as to how one can "unsubscribe," or otherwise cancel future monthly payments.

21. Upon making payment, the user will sometimes receive a confirmation email at the address they used in the sign-up process. That bare-bones confirmation email does not provide any information or reminder that the charge will be recurring or automatically renew, nor does it provide any information as to how the user can "unsubscribe," Defendants' cancellation policy, or any of the other information required by section 17602(a)(3):



22. In other circumstances, the details of which are unknown to Plaintiff prior to taking discovery in this matter, the user receives no acknowledgement whatsoever after making payment, as exemplified by the instance where one pays \$6.99 to follow the creator known as @annie_kay.

23. Furthermore, nowhere in the foregoing enrollment process to a particular creator's account do Defendants "first obtain[] the consumer's affirmative consent to the agreement containing the automatic renewal offer terms," which is in further violation of section 17602(a)(2). In particular, on the webpage in the sign-up process where a user selects a username and inputs his or her email address and selects a password, Defendants include (in light grey and light blue, extremely small text) a notification that "By signing up you agree to our Terms of Service and Privacy Policy," with hyperlinks to those documents, as seen in the following screenshot:



24. Clicking on the “Terms of Service” link takes a user to a separate webpage that consists of a 36-page set of “terms.” Nowhere in that document are the terms of Defendants’ automatic renewal offer set forth clearly and conspicuously either, in further violation of ARL section 17602. Rather, the automatic renewal explanation is buried in section 8.h of that document, on its fifteenth page, where it is presented in a way that is indistinguishable from any other term in the agreement.

25. All of these violations of the ARL occur systematically, in that each user who subscribes to each content creator’s account receives the exact same legally inadequate disclosures on the front end of the transaction, and the exact same inadequate “acknowledgement” (or lack of any acknowledgement whatsoever) on the back end of the transaction.

26. Plaintiff Marcelo Muto was subject to this same pattern of violation of the ARL when he subscribed to follow the account of an OnlyFans creator called “@taste.of.heaven” in February 2021. Mr. Muto paid the initial subscription fee to that account, and in doing so failed to receive an adequate set of disclosures at the time of that transaction to clearly and

1 conspicuously advise him that his card would be automatically billed upon expiration of his initial
2 enrollment period. Similarly, upon information and belief Mr. Muto did not receive any post-
3 transaction acknowledgement advising him of the matters set forth in section 17602(a)(3), but if
4 he did, that acknowledgement would have consisted of nothing beyond the Blac Chyna
5 confirmation email excerpted above.

6 27. Mr. Muto was thereafter charged a \$29.99 automatic renewal fee on or about
7 March 14, 2021. Only when Mr. Muto thereupon contacted Defendants to complain about the
8 charge—advising that “I was charged 30 dollars unintentionally”—did Defendants respond
9 through a customer service representative called “Evans” with the explanation:

10 Hi there,

11 Thanks for reaching out.

12 The auto-renewal for the subscription to @taste.of.heaven was not disabled
13 before the next billing date. The auto-renew feature was enabled from the
start, I am sorry you did not notice this at first.

14 You may cancel your subscription at any time, which will allow you to
15 access the user’s profile until the end of the existing billing period, where
you will lose access to the content and will not be re-billed. Navigate to this
16 page and make sure that Auto-Renew for your subscription is disabled:
<https://onlyfans.com/my/subscriptions/>

17 If you see a Subscribed button and the renewal date for the corresponding
18 subscription - it is set for Auto-Renew. And if you see the Renew button
and the expiration date - it means that Auto-Renew is already disabled.

19 Users can unsubscribe anytime, but there are no refunds as all subscriptions
20 are final and non-refundable. Please see more details at this page:
<https://onlyfans.com/terms>

21 Feel free to let us know if we can help you with anything else in the future.

22 Evans

23 28. In other words, Defendants fully acknowledged the likelihood that Mr. Muto “did
24 not notice this at first,” (*i.e.*, that “[t]he auto-renew feature was enabled”), but nevertheless
25 advised that “there are no refunds as all subscriptions are final.” Had Mr. Muto received the clear
26 and conspicuous disclosures required by the ARL at the time he initially subscribed to
27 @taste.of.heaven, and the post-subscription acknowledgment required by section 17602(a)(3)
28 with details on the auto-renewal offer and a readily accessible means of canceling, he would have

1 canceled his subscription prior to the renewal date, and would not have lost \$29.99 to Defendants.

2 **CLASS ALLEGATIONS**

3 29. Mr. Muto's experience with Defendants' deceptive automatic renewal scheme is
 4 far from unique. Indeed, every California consumer who subscribed to every creator account
 5 within the relevant statute of limitations period failed to receive the disclosures that California
 6 law requires in exactly the same way that Mr. Muto failed to receive them. Because all of those
 7 automatic renewal fees assessed against California consumers were "unlawful," B&P Code
 8 § 17602(a), Mr. Muto and all members of the class he seeks to represent are entitled to restitution
 9 of the fees they paid, in every successive month for which they were assessed.

10 30. Mr. Muto brings this lawsuit as a class action under Code of Civil Procedure § 382
 11 on behalf of the following Class:

12 All individuals in California who subscribed to the accounts of one or more
 13 OnlyFans creators in the four years preceding the filing of this complaint,
 14 and who were subsequently assessed an automatic renewal fee associated
 15 with those account(s), where the charge for that fee was not charged back
 to Defendants. Excluded from the Class are all employees of Defendants,
 and the judicial officers to whom this case is assigned.

16 Plaintiff reserves the right to amend this class definition as necessary and appropriate prior to
 17 moving for class certification.

18 31. The proposed class is so numerous that joinder of all class members would be
 19 impracticable. Upon information and belief, Mr. Muto alleges that the class includes at least
 20 10,000 members. The class members are all ascertainable from records in possession of
 21 Defendants, specifically Defendants' customer and billing records. Furthermore, Defendants'
 22 actions against class members are generally applicable to every member of the proposed class,
 23 thereby making appropriate restitution and further injunctive relief appropriate as to the entire
 24 proposed class.

25 32. The questions of law and fact that are determinative of Mr. Muto's allegations are
 26 shared by all members of the class, and greatly predominate over any individual issues. Common
 27 questions include, without limitation: (1) whether Defendants present all statutorily-mandated
 28 automatic renewal offer terms in a manner that is clear and conspicuous within the meaning of

1 California law and in visual proximity to a request for consent to the offer; (2) whether
 2 Defendants provide the post-transaction acknowledgement disclosures required by section
 3 17602(a)(3) of the ARL; (3) Defendants' policies, practices and procedures for obtaining
 4 affirmative consent from their California customers before charging their credit or debit card; and
 5 (4) the appropriate remedies for Defendants' conduct.

6 33. Mr. Muto's claims are typical of the claims of the class members in that he
 7 received the exact same inadequate pre-transaction disclosures as received by all members of the
 8 class, and similarly received an inadequate post-transaction "acknowledgement" that included the
 9 contents required by section 17602(a)(3). Mr. Muto's claims are further typical in that his card
 10 was charged for an automatic renewal fee without Defendants having first obtained his
 11 affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic
 12 renewal offer terms. Mr. Muto furthermore has no interests that are adverse to those of the absent
 13 class members, and he has committed to fairly and adequately protect the interests of those class
 14 members.

15 34. A class action is superior to other methods for resolving this controversy. Because
 16 the amount of restitution to which each Class member may be entitled is low in comparison to the
 17 expense and burden of individual litigation, it would be impracticable for Class members to
 18 redress the wrongs done to them without a class action forum. Furthermore, on information and
 19 belief, Class members do not know that their statutory rights have been violated, so they would be
 20 unlikely to pursue single-party remedies on their own behalf absent a class action. Class
 21 certification would also conserve judicial resources and avoid the possibility of inconsistent
 22 judgments.

23 **FIRST CAUSE OF ACTION**

24 **(False Advertising in Violation of the California Automatic Renewal Law, B&P Code §§** 25 **17535; 17600 *et seq.*)**

26 35. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
 27 fully set forth herein.

28 36. Defendants enrolled Plaintiff and an untold number of California consumers who

comprise the class alleged herein, into an automatic renewal program that violates the ARL by, among other things, (a) failing to present automatic renewal offer terms in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in visual proximity to the offer; (b) charging the consumer's credit card or debit card for an automatic renewal fee without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic renewal offer terms; and (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of all automatic renewal offer terms, the cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer and that provides a mechanism for cancellation that is cost-effective, timely, and easy to use, all in violation of § 17602(a) and (b).

37. Defendants' violations of the ARL are in turn a violation of California's False Advertising Law, Business & Professions Code section 17500 *et seq.* Under section 17535 of the False Advertising Law, Plaintiff and members of the class are entitled to an injunction prohibiting further violations of the ARL, and restoring to Plaintiff and members of the class the money that Defendants acquired from them by means of the ARL violations described herein.

SECOND CAUSE OF ACTION

(Violation of the California Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.*)

38. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though fully set forth herein.

39. Plaintiff and all members of the class are "consumers" within the meaning of Civil Code § 1761(d) in that Plaintiffs sought or acquired Defendants' goods and/or services for personal purposes.

40. Defendants' membership program pertains to "services" within the meaning of Civil Code § 1761(a) and (b).

41. The payments that Plaintiff and members of the class made to Defendants are "transactions" within the meaning of Civil Code section 1761(e).

42. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (9), and (14), by representing that Defendants' goods or services have characteristics that they do not have;

1 advertising goods and services with the intent not to sell them as advertised; and representing that
2 a transaction confers or involves rights, remedies, or obligations that it does not have or involve,
3 or that are prohibited by law.

4 43. Unless enjoined and restrained by this Court, Defendants will continue to commit
5 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), on behalf of the Class and also
6 for the benefit of the general public of the State of California, Plaintiff seeks an injunction
7 prohibiting Defendants from continuing their unlawful practices as alleged herein.

8 **THIRD CAUSE OF ACTION**

9 **(Violation of the California Unfair Competition Law, B&P Code § 17200 *et seq.*)**

10 44. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
11 fully set forth herein.

12 45. The Unfair Competition Law defines unfair competition as including any
13 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or
14 misleading advertising; and any act of false advertising under § 17500.

15 46. In the course of conducting business in California within the applicable limitations
16 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
17 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation: (a)
18 failing to present automatic renewal offer terms in a clear and conspicuous manner before a
19 subscription or purchasing agreement is fulfilled and in visual proximity to the offer; (b) charging
20 the consumer's credit card or debit card for an automatic renewal fee without first obtaining the
21 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of
22 the automatic renewal offer terms; and (c) failing to provide an acknowledgment that includes
23 clear and conspicuous disclosure of all automatic renewal offer terms, the cancellation policy, and
24 information regarding how to cancel in a manner that is capable of being retained by the
25 consumer and that provides a mechanism for cancellation that is cost-effective, timely, and easy
26 to use, all in violation of § 17602(a) and (b).

27 47. Defendants' acts, omissions, nondisclosures, and statements as alleged herein were
28 and are false, misleading, and/or likely to deceive the consuming public.

1 Dated: October 24, 2022

GAW | POE LLP

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3 By: 

4 MARK POE

5 Attorneys for Plaintiff
6 Marcelo Muto
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